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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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**IN THE MATTER ARIZONA PUBLIC
SERVICE COMPANY'S REQUEST
FOR AUTHORIZATION FOR
INCREASE IN RECOVERY
GUARANTEE FOR PRODUCTION
BASED INCENTIVES FOR
DISTRIBUTED RENEWABLE
GENERATION PROJECTS**

Docket No. E-01345A-09-0263

**SUNRUN INC.'S COMMENTS TO
STAFF'S RECOMMENDED ORDER**

SunRun Inc. ("SunRun") hereby files comments upon the recommended Order and supporting documentation filed by the Staff of the Arizona Corporation Commission ("Commission"). As described in greater detail below, SunRun's position is that under reasonable conditions the Commission could allow Arizona Public Service ("APS") to shift some funds from the residential to the commercial sector to benefit schools this

1 year. But schools are not residences, and therefore, Renewable Energy Credits (“RECs”)
2 generated by school projects cannot be counted as residential RECs.
3

4 **1.0 Issues Raised By APS.**

5 Setting aside the request to increase the recovery guarantee from \$77 million to
6 \$220 million,¹ APS has actually raised two separate and distinct issues that concern
7 SunRun:
8

- 9 • First, APS is requesting that the Commission shift at least \$20 million of
10 incentive money from APS residential customers to commercial customers.
- 11 • Second, APS is requesting that the Commission redefine the plain meaning of
12 the term “residential” to include schools so it can effectively shift RECs from
13 residential to commercial accounts.

14 As the Commission undoubtedly already knows, there is no requirement that these two
15 issues – (i) shifting of funds and (ii) shifting of RECs – be linked and they should be
16 addressed separately. *See, e.g.*, Mayes Proposed Amendment No. 2, bullet point 6.
17

18 **2.0 SunRun’s Positions.**

19 A practical unintended consequence of the effort to assist Arizona’s schools
20 through APS’s proposal would be to shrink Arizona’s residential distributed generation
21 market. As a retail supplier of residential solar power systems that provide affordable,
22 hassle-free solar electricity to homeowners, SunRun is extremely troubled by this
23 ongoing effort to shrink the residential solar market. Still, SunRun does not oppose
24
25

26 ¹ As previously stated, assuming the Commission finds that APS’s incentive program as implemented is reasonable,
27 SunRun believes that APS’s request to increase the PBI cost recovery guarantee for large-scale nonresidential
28 customers as presented in the Application is worthy of Commission consideration. However, SunRun is not taking a
position on the recovery guarantee issues in this matter at this time.

1 helping school solar projects with additional funding. Accordingly, SunRun's position is
2 straightforward: APS may shift some funds from residences to schools this year, but
3 schools are not residences, and RECs generated by school projects must be counted as
4 nonresidential RECs, not residential RECs.
5

6 **2.1 SunRun does not oppose transferring funds to schools this one time to**
7 **help fund Performance Based Incentives for the schools' benefit.**

8 SunRun recognizes the value of renewable energy systems for Arizona's schools,
9 and does not oppose transferring funds to school projects this one time. Under the
10 current rules and Renewable Energy Standard Implementation Plan ("Implementation
11 Plan"), school projects qualify to receive Performance Based Incentives ("PBIs").²
12 Funds shifted from the residential sector to the nonresidential sector to help build school
13 projects should be used to fund PBIs. The PBI approach is the standard industry practice
14 throughout the country for larger nonresidential projects like those built at schools and
15 there is no reason to change the incentive program set forth in the Implementation Plan at
16 this time.
17
18
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20 Further, in its analysis in the SolarCity matter, Staff assumed schools in APS's
21 service area would receive PBIs, and recommended that the Commission approve the
22 PBIs approach for schools. *See In the Matter of SolarCity Corporation for a*
23 *Determination that When It Provides Solar Service to Arizona Schools, Governments,*
24 *and Non-Profit Entities It Is Not Acting as a Public Service Corporation Pursuant to Art.*
25
26

27
28 ² In practice, PBIs are received by third-party owners of solar power generating facilities, who finance these rebates
and pass the expected value along to their customers, such as schools here, in the form of lower per-kWh rates.

1 15, Section 2 of the Arizona Constitution, Utilities Division Memorandum dated Aug. 14,
2 2009, at p. 3 & 10 (Docket No. E-20690A-09-0346).

3
4 This is consistent with Decision No. 70654, which states that nonresidential
5 projects with an incentive value of \$75,000 or less would receive a one-time up-front
6 incentive (“UFI”) while those with incentive values exceeding \$75,000 would be offered
7 a PBI. *See id.* at p. 3, ¶13. This approach was developed after years of analysis to create
8 a fair market designed to encourage distributed renewable generation throughout Arizona
9 and there is no reason to change this incentive program in ways that would allow a
10 handful of large projects to corner the limited available funding.³

11
12
13 Simply put, SunRun can support the transfer to schools of incentive funding that
14 may go unused in the residential market this year, provided the rules are not changed.

15 **2.2 Residential RECs must stay with residential customers as required by**
16 **law.**

17
18 Arizona Administrative Code Rule R14-2-1805(D) requires APS to meet half of
19 its annual Distributed Renewable Energy Requirement from residential projects. Last
20 year, APS argued that the Commission should approve a plan that would reduce APS’s
21 residential REC requirement from 50% to 25%, effectively shrinking the residential solar
22 market. *See* Decision No. 70654 at p. 6, ¶ 29. Wisely, the Commission rejected that
23 argument, no doubt due in large part to A.A.C. R14-2-1805(D), which expressly requires
24 APS to “meet one-half of its annual Distributed Renewable Energy Requirement from
25
26

27
28 ³ For example, if uncapped UFIs at a rate of \$2.25 per watt were offered to the 968 kW project at Desert Mountain High School, then the third-party owner of that project would receive \$2,178,000 in UFIs.

1 residential applications and the remaining one-half from nonresidential, nonutility
2 applications.” The Commission understood then, as it understands now, that the
3
4 Commission cannot simply ignore or waive its own codified rules.

5 Yet, less than nine months after the Commission rejected APS’s request, APS has
6 reframed the issue around schools and again argues that the Commission should reduce
7 the residential REC generation requirement by simply redefining the term “residential” to
8 include schools. As the Court of Appeals has explained, however, where the term
9 “residential” is undefined in statute or rule, as is the case here, it must be given its plain
10 and ordinary meaning as a dwelling place where people reside:
11
12

13 In construing a legislative enactment, we apply a practical and
14 commonsensical construction. *See State v. Cornish*, 192 Ariz. 533, 537, 968
15 P.2d 606, 610 (App.1998). Since “residential” is not defined in the Mesa
16 zoning regulations, we thus will give the word its plain and ordinary
17 meaning. As such, “residential” describes the “circumstances or fact of
18 having one's usual or permanent abode in or at a certain place” or the
19 **“place where one resides; one's dwelling-place; the abode of a
20 person....”** Oxford English Dictionary (1987)... *see Webster's Third New
21 International Dictionary of the English Language (unabridged)(1969)(a
22 structure “used, serving, or designed as a residence or for occupation by
23 residents ... of, relating to, or connected with residence or residences”).*
24 Similarly, a newer edition of the dictionary [defendant] cites defines
25 “residential” as “of or connected with residence ..., characterized by, or
26 suitable for residences, or homes ... chiefly for residents rather than
27 transients.” Webster's New World Dictionary-Third College Edition (1988).

28 *State v. Alawy*, 198 Ariz. 363, 365, 9 P.3d 1102, 1104 (Ariz.App. Div. 1, 2000) (emphasis
added); *see also* Black's Law Dictionary (8th ed., 2004) (residence means “place where
one actually lives”).

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1 Obviously, schools are not residences. While one may posit a hypothetical "close
2 call" scenario where one could classify a mixed-use facility as either residential or
3 nonresidential, schools do not pose such a case. Therefore, pursuant to binding
4 precedent, residential cannot simply be administratively redefined to include schools, and
5 school renewable system projects must remain classified as nonresidential.
6

7
8 Mayes Proposed Amendment No. 2 bullet point 6 seemingly questions whether
9 APS typically treats schools as residential or commercial customers. This proposed
10 amendment states:

11
12 Renewable energy and associated [RECs] from school projects at schools
13 that are currently being served on a residential tariff shall be counted
14 toward compliance with the Renewable Energy Standard and Tariff
15 residential distributed energy requirement. Renewable energy and
16 associated [RECs] from school projects being serviced under a commercial
17 tariff shall be counted toward compliance with the Renewable Energy
18 Standard and Tariff commercial distributed generation requirement.

19 SunRun understands that schools served by APS are billed under a commercial tariff.

20 Assuming this understanding is correct, SunRun supports Mayes Proposed Amendment
21 No. 2 bullet point 6, which in fact complies with applicable rules.

22 The bottom line is that the law does not allow RECs generated from schools and
23 other nonresidential projects to count toward compliance with the residential distributed
24 energy requirement. The final Order should clearly reject the argument that schools are
25 residences and that RECs generated from nonresidential school projects count towards
26 the residential distributed energy requirement.

27 ////

28 ////

1 **3.0 SunRun's Suggested Amendments.**

2 Consistent with the understanding described above, SunRun requests that the
3
4 Commission adopt Mayes Proposed Amendment No. 2 bullet point 6. Further, to ensure
5 that schools are the primary entities benefiting from the shifting of funds from the
6 residential to the commercial incentive program and still maintain the integrity of the
7 existing program, the Commission should adopt the following language in the "Order"
8
9 section at page 9 of the recommended Order:

10 Any and all 2009 Renewable Energy Standard and Tariff residential
11 distributed energy funding made available to fund nonresidential school
12 projects must be used as Performance Based Incentives for the benefit of
13 schools consistent with APS's 2009 Renewable Energy Standard
Implementation Plan approved in Decision No. 70654.

14 By adopting this language, the Commission will be rejecting the proposals that
15 effectively (i) offer solar development companies UFIs for large commercial school
16 projects; and (ii) waive the \$75,000 UFI cap for those project. SunRun also requests that
17 the Commission make all conforming changes as deemed necessary to ensure the final
18 Order is consistent with these provisions.
19
20

21 RESPECTFULLY SUBMITTED this 24th day of August, 2009.

22 **MOYES SELLERS & SIMS LTD.**

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24 

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1 **Original and 13 copies filed this**
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